

House Bill 1176 (AS PASSED HOUSE AND SENATE)

By: Representatives Knight of the 126<sup>th</sup>, Smith of the 70<sup>th</sup>, Roberts of the 154<sup>th</sup>, McCall of the 30<sup>th</sup>, Wilkinson of the 52<sup>nd</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

To amend Title 36 of the Official Code of Georgia Annotated, relating to local government, and Title 12 of the Official Code of Georgia Annotated, relating to conservation and natural resources, so as to redesignate and extensively revise certain provisions relating to land conservation projects; to amend Title 12 of the Official Code of Georgia Annotated, relating to conservation and natural resources, so as to make a corresponding change in a cross-reference in certain provisions relating to the purpose and nature of the Oconee River Greenway Authority; to change certain provisions relating to powers and duties of the State Forestry Commission; to amend Article 1 of Chapter 23 of Title 50 of the Official Code of Georgia Annotated, relating to the Georgia Environmental Facilities Authority, so as to change certain provisions relating to definitions; to change certain provisions relating to purpose, powers, and duties of the authority; to change certain provisions relating to grants and loans to local governments and repayment thereof; to provide certain penalties for failure to remit funds due the authority; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**PART I**

**SECTION 1-1.**

Title 36 of the Official Code of Georgia Annotated, relating to local government, and Title 12 of the Official Code of Georgia Annotated, relating to conservation and natural resources, are amended by redesignating Chapter 22 of the former title, relating to land conservation, as Chapter 6A of the latter title and by revising said chapter as follows:

**"CHAPTER ~~22~~ 6A**

~~36-22-1~~ 12-6A-1.

The intent of this chapter is to provide a flexible framework within which cities and counties in this state, the Department of Natural Resources, other state and federal

departments and agencies, state authorities, and private partners can protect the state's valuable natural resources. The General Assembly recognizes that the state-wide network of land and water resources, the state's prime agricultural and forestry lands, and its natural, cultural, historic, and recreational areas are a priceless legacy that enhance the health of ecosystems, encourage working landscapes, foster natural resource stewardship, sustain a healthy economy, and promote a sustainable high quality of life for current and future generations of Georgians. The process provided by this chapter is intended to promote partnerships for the conservation of land resources that are identified by cities or counties as locally valuable or identified by the ~~Department of Natural Resources~~ department as having state-wide significance. This chapter ~~will~~ shall also provide land conservation funding options, ~~which will~~ to augment currently available local, state, and federal funding.

~~36-22-2~~ 12-6A-2.

As used in this chapter, the term:

(1) 'Authority' means the Georgia Environmental Facilities Authority established in Code Section 50-23-3.

(2) 'City' means a statutorily established municipal government.

~~(3) 'Community land conservation project' means a conservation land project sponsored by cities and counties in this state to accomplish strategic investment in protection of locally identified land resources with high environmental values or conservation benefits.~~

'Commission' means the State Forestry Commission established under Code Section 12-6-2.

(4) 'Conservation easement' means a conservation easement established in accordance with Code Section 44-10-2.

(5) 'Conservation land' means permanently protected land and water, or interests therein, that is in its undeveloped, natural state or that has been developed only to the extent consistent with, or is restored to be consistent with, one or more of the following goals:

(A) Water quality protection for rivers, streams, and lakes;

(B) Flood protection;

(C) Wetlands protection;

(D) Reduction of erosion through protection of steep slopes, areas with erodible soils, and stream banks;

(E) Protection of riparian buffers and other areas that serve as natural habitat and corridors for native plant and animal species;

(F) Protection of prime agricultural and forestry lands;

(G) Protection of cultural sites, heritage corridors, and archeological and historic resources;

(H) Scenic protection;

(I) Provision of recreation in the form of boating, hiking, camping, fishing, hunting, running, jogging, biking, walking, or similar outdoor activities; and

(J) Connection of existing or planned areas contributing to the goals set out in this paragraph.

(6) 'Costs of acquisition' means all direct costs of activities which are required by applicable state laws and local ordinances or policies in order to obtain fee simple or lesser interests in real property or to convey a conservation easement to a holder who will ensure the permanent protection of the property as conservation land. Said costs shall include the purchase price, if any; the costs of due diligence investigation, such as appraisals, surveys, phase 1 environmental reports, and title searches; title insurance; fees for services related to the direct acquisition of the real property, such as holding costs, overhead costs, finder's fees, and real estate commissions; attorney fees; pro rata ad valorem taxes; resource stewardship; and other costs related to closing the transaction; provided, however, that said costs shall not include any costs for services provided in violation of Chapter 40 of Title 43.

(7) 'Council' means the Georgia Land Conservation Council established by this chapter.

(8) 'County' shall include consolidated county and municipal governments as well as a county.

(9) ~~'Department' means the Georgia Department of Natural Resources established in Code Section 12-2-1.~~ 'Land conservation project' means a conservation land project to accomplish strategic investment in protection of identified land resources with high environmental values or conservation benefits.

(9.1) 'Nongovernmental entity' means a nonprofit organization the primary purposes of which are the permanent protection and conservation of land and natural resources.

(9.2) 'Other state authority' means a state authority that is otherwise created and authorized by law to engage in projects that would qualify as land conservation projects, to accept grants or loans, and to incur debt and is recommended by the department to receive either grants or loans for such a project; provided, however, that such term shall not include the Georgia Building Authority.

(9.3) 'Other state department or agency' means a state department or agency that is otherwise authorized by law to engage in projects that would qualify as land conservation projects.

(10) 'Permanently protected land and water' means those resources:

(A) Owned by the federal government and designated for recreation, conservation, or natural resource;

(B) Owned by the State of Georgia and dedicated as a heritage preserve;

(C) Owned by a state or local unit of government or authority and subject to:

(i) A conservation easement that ensures that the land will be maintained as conservation land;

(ii) Contractual arrangements that ensure that, if the protected status is discontinued on a parcel, such property will be replaced by other conservation land which at the time of such replacement is of equal or greater monetary and resource protection value;

(iii) A restrictive covenant in favor of a federal governmental entity; or

(iv) A permanent restrictive covenant as provided in subsection (c) of Code Section 44-5-60;

(D) Owned by any person or not for profit or for profit entity, subject to a conservation easement that ensures that the land will be maintained as conservation land; or

(E) Permanently legally protected by any other method that ensures the conservation land will remain forever in uses which further the goals of this chapter.

(11) 'Revolving loan fund' means the Georgia Land Conservation Revolving Loan Fund established by this chapter.

~~(12) 'State land conservation project' means conservation land projects sponsored by the department to accomplish the strategic investment in protection of land resources identified by the department as having high environmental values or conservation benefits.~~ Reserved.

(13) 'Trust fund' means the Georgia Land Conservation Trust Fund established by this chapter.

~~36-22-3~~ 12-6A-3.

(a) There is created the Georgia Land Conservation Council. The council shall be composed of the state property officer, who shall serve as chairperson, the commissioner of natural resources, the director of the State Forestry Commission, the executive director of the State Soil and Water Conservation Commission, the commissioner of community affairs, and four additional members to be appointed by and to serve at the pleasure of the Governor.

(b) The members of the council shall receive no compensation for their services on the council but shall be reimbursed for actual expenses incurred while discharging the duties imposed upon them by this chapter.

(c) For administrative purposes, the council shall be attached to the authority. The authority shall provide staff support to the council, utilizing personnel and funds available to the authority.

~~36-22-4~~ 12-6A-4.

(a) The ~~Department of Natural Resources~~ department may establish a land conservation program consistent with the purposes of this chapter.

(a.1) There is established the Georgia Land Conservation Trust Fund and the Georgia Land Conservation Revolving Loan Fund to consist of any moneys paid to the authority under intergovernmental contract for purposes of this chapter, voluntary contributions to such funds, any federal moneys deposited in such funds, other moneys acquired for the use of such funds by any fund raising or other promotional techniques deemed appropriate by the authority, and all interest thereon. Moneys which are restricted as to their usage, including, but not limited to, restrictions on the kinds of projects for which the moneys can be expended or loaned, on the entity that can receive grants or loans of such moneys, on the manner in which such moneys can be expended or loaned, and any other condition, limitation, or restriction, may nevertheless be deposited in the funds so long as any such restriction does not prevent the moneys so deposited from being expended, loaned, or otherwise used in a manner that is consistent with the purposes of this chapter. All balances in the funds shall be deposited in interest-bearing accounts. The authority shall administer the funds, shall grant or loan moneys held in the funds in furtherance of the purposes of and pursuant to the provisions of this chapter, and shall prepare, by June 30 of each year, an accounting of the funds received and expended from the funds. The report shall be made available to the council, to the members of the General Assembly, and to members of the public on request.

(b) Within the trust fund, moneys shall be made available in each fiscal year for grants to cities and counties having an approved ~~community~~ land conservation project; having complied with state laws, regulations, contracts, and agreements; and having matching funds at a percentage of the total project cost as established by the authority or for grants to the department, the commission, other state department or agency, or other state authority having an approved ~~state~~ land conservation project.

(c) Within the revolving loan fund, moneys shall be made available in each fiscal year for loans to cities, ~~and counties,~~ and nongovernmental entities having approved ~~community~~ land conservation projects or for loans to state authorities specified by the department for purposes of approved ~~state~~ land conservation projects of the department. Any such loan shall bear interest at a rate established by the authority.

(d) Moneys granted from the trust fund or from the revolving loan fund shall be expended solely to defray the costs of acquisition of conservation land as defined in this chapter or of conservation easements which contribute to the goals set out for conservation land in Code Section ~~36-22-2~~ 12-6A-2.

(e) As a condition of project approval and release of funds, ~~cities, counties, and the department are~~ the grant or loan recipient shall be required to record acquisitions of real or partial interest in land purchased by using grants or loans established in this chapter with the ~~Department of Natural Resources~~ department.

(f)(1) Each Georgia income tax return form for taxable years beginning on or after January 1, 2005, shall contain appropriate language, to be determined by the state revenue commissioner, offering the taxpayer the opportunity to contribute to the Georgia Land Conservation Trust Fund established in subsection (a) of this Code section by either donating all or any part of any tax refund due, by authorizing a reduction in the refund check otherwise payable, or by contributing any amount over and above any amount of tax owed by adding that amount to the taxpayer's payment. The instructions accompanying the income tax return form shall contain a description of the purposes for which this fund was established and the intended use of moneys received from the contributions. Each taxpayer required to file a state income tax return who desires to contribute to the Georgia Land Conservation Trust Fund may designate such contribution as provided in this Code section on the appropriate income tax return form.

(2) The Department of Revenue shall determine annually the total amount so contributed, shall withhold therefrom a reasonable amount for administering this voluntary contribution program, and shall transmit the balance to the authority for deposit in the Georgia Land Conservation Trust Fund established in subsection (a.1) of this Code section; provided, however, that the amount retained for administrative costs shall not exceed \$50,000.00 per year. If, in any tax year, the administrative costs of the Department of Revenue for collecting contributions pursuant to this Code section exceed the sum of such contributions, the administrative costs which the Department of Revenue is authorized to withhold from such contributions shall not exceed the sum of such contributions.

(g) The department may, by agreement with ~~such a city, or county,~~ such a city, or county, or nongovernmental entity, accept and administer property acquired by a ~~such city, or county,~~ such city, or county, or nongovernmental entity pursuant to this chapter or may make such other agreements for the ownership and operation of the property as are outlined in Code Sections 12-3-32 and 27-1-6.

(h) ~~Cities, counties, and the department,~~ the commission, other state departments or agencies, and other state authorities may, by agreement with tax-exempt organizations

under Section 501(c)(3) of the federal Internal Revenue Code as established in a memorandum of understanding adopted by the council, enter into partnerships to assist with the development of land conservation project proposals, to assist with the establishment of a local funding match, and to accept and administer property acquired by a city, or county, or the department, the commission, other state department or agency, or other state authority pursuant to this chapter.

~~36-22-5.~~

~~Reserved.~~

~~36-22-6.~~

~~Reserved.~~

~~36-22-7.~~

~~Reserved.~~

~~36-22-8~~ 12-6A-5.

(a) Approval of a ~~community~~ land conservation project proposal for purposes of this chapter ~~or a state land conservation project proposal for purposes of this chapter~~ shall be accomplished as provided for in this Code section. ~~Cities or counties and the department shall~~ Cities, counties, the department, the commission, other state departments or agencies, other state authorities, and nongovernmental entities may develop and submit ~~community and state~~ land conservation projects using rules and regulations established by the authority. Cities, counties, ~~and~~ the department, the commission, other state departments or agencies, and other state authorities may develop ~~community and state~~ land conservation proposals in partnership with nonprofit environmental and conservation organizations and organizations that are tax-exempt under Section 501(c)(3) of the federal Internal Revenue Code. The department shall make available its geographic information systems data as described in Code Section ~~36-22-13~~ 12-6A-10 to cities, ~~and~~ counties, the commission, other state departments or agencies, and other state authorities to assist them in the development of ~~community~~ land conservation proposals. Land conservation projects by any nongovernmental entity shall be submitted by means of co-application with the city or county having jurisdiction over the area in question, but such city or county shall not be liable for any debt of the nongovernmental entity.

(b)(1) The authority shall review each land conservation project for fiscal merit, for the capacity of the applicant to fulfill its matching fund or loan repayment commitments, for the fiscal solvency of the entity identified as responsible for protecting and managing the

1 conservation land or conservation easement, and for compliance with all applicable terms  
2 and conditions of this chapter.

3 (2) The authority shall make a recommendation based on its review of each land  
4 conservation project to the council, including recommended funding sources, funding  
5 levels, and the terms and conditions of those funds.

6 (c)(1) The department shall review each land conservation project proposal for its  
7 strategic investment in land resources with high environmental values or conservation  
8 benefits; for consistency with the land conservation goals set forth in this chapter and the  
9 land conservation priorities set forth by the Governor; for the merit of a plan for  
10 long-term management of the conservation land or conservation easement; and for  
11 compliance with all applicable terms and conditions of this chapter.

12 (2) The department shall make a recommendation based on its review of each land  
13 conservation project to the council, including any terms and conditions of those funds.

14 (d) The council shall review each land conservation project proposal and shall consider the  
15 recommendations of the authority and the department, as well as the procedures,  
16 conditions, components, priorities, and criteria set forth in subsections (c) and (e) of this  
17 Code section, and any rules and regulations promulgated by the authority. The decision  
18 of the council that a land conservation project complies with all of the required terms and  
19 conditions and is approved shall cause the city, county, ~~or department,~~ commission, other  
20 state department or agency, other state authority, or nongovernmental entity to become  
21 eligible for funding pursuant to the terms of this chapter and of the project approval. The  
22 authority shall then be responsible for the execution of each such project approval decision  
23 of the council.

24 (e) The council shall adopt procedures to review and determine the disposition of project  
25 proposals including, but not limited to, a schedule of meetings on an as needed basis, but  
26 not less than quarterly, at which project proposals will be considered; the components  
27 required to comprise a project proposal; the format in which project proposals will be  
28 presented for consideration by the council; the conditions which provide priority ranking  
29 to be used in reviewing the merits of project proposals; and the means, such as a  
30 memorandum of understanding, by which organizations that are tax-exempt under  
31 Section 501(c)(3) of the federal Internal Revenue Code may enter into partnerships with  
32 cities, or counties, or the department, the commission, other state departments or agencies,  
33 other state authorities, or nongovernmental entities to assist with the development and  
34 implementation of project proposals.

35 (f) The council shall use, at a minimum, the following criteria in granting project approval:

36 (1) The project shall promote the permanent protection of conservation land;



(2) The identification and commitment to the employment of local land use ordinances and local conservation and preservation ordinances, policies, and regulations which further the achievement of the permanent protection of conservation land; and

(3) Project proposals which are multijurisdictional in scope or regional in impact will receive additional ranking points.

(g) The council, the authority, and the department, ~~and the Georgia Building Authority~~ shall enter into contracts or memorandums of understanding, as appropriate and consistent with the intent and provisions of this chapter, setting forth the details of how they will each discharge, in cooperation with the others, their respective responsibilities under this chapter.

~~36-22-9~~ 12-6A-6.

~~Grants for state land conservation projects sponsored by the department may be made by the authority to the Georgia Building Authority at the request of the department. It is also contemplated that grants may in appropriate cases be made for the acquisition of land, and that the grantee shall be permitted to place the needed and appropriate conservation easements on such land to ensure its permanent protection as contemplated in this chapter and that the grantee would then be entitled to resell the land to private parties at the highest obtainable price and return the proceeds to the trust fund for reuse for additional grants.~~

~~36-22-10~~ 12-6A-7.

Any city or county of this state, the department, the commission, other state department or agency, other state authority, or nongovernmental entity shall be eligible to submit a land conservation project for approval pursuant to the terms of this chapter.

~~36-22-11~~ 12-6A-8.

Moneys in the trust fund or revolving loan fund shall be made available to all cities and counties in the state ~~and to~~ the department, the commission, other state departments or agencies, other state authorities, and nongovernmental entities for preservation of land or conservation easements on land. The authority is authorized and directed to accept and review project proposals for such moneys under terms, conditions, and procedures to be established by regulation of the authority and is authorized to make such grants or loans in such amounts as it deems appropriate. Any such grant or loan shall be administered in a manner consistent with purposes of this chapter and any regulations promulgated by the authority and the council applicable to such grants and loans, together with the terms and conditions of any such grant or loan.

~~36-22-12~~ 12-6A-9.

The authority is authorized to promulgate such rules and regulations as it may deem advisable to implement the terms of this chapter; provided, however, that for purposes of this chapter the authority shall be an agency subject to the provisions of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The authority is authorized to audit, or have audited, the use of moneys from the trust fund or revolving loan fund or the use of properties obtained in whole or in part by the use of such moneys.

~~36-22-13~~ 12-6A-10.

(a) The department shall establish the State Land Conservation Geographic Information System by maintaining its current geographic information system data and maps related to land conservation; annually updating its land conservation data and maps based on the acquisitions of ~~community and state~~ land conservation projects; and monitoring progress in protecting the state's land resources.

(b) The department shall make its geographic information system data and maps available to cities, ~~and counties,~~ the commission, other state departments or agencies, and other state authorities to assist them in the strategic investment of ~~community~~ land conservation projects in land resources with high environmental values or conservation benefits as based on the conservation goals set forth in this chapter.

(c) The department shall cooperate with the ~~State Forestry Commission~~ commission, the State Soil and Water Conservation Commission, the Cooperative Extension Service of the University of Georgia and other institutions and organizations with outreach programs designed for landowners to provide technical support on land conservation. The department shall assist cities, ~~and counties,~~ the commission, other state departments or agencies, other state authorities, and nongovernmental entities with the development of ~~community~~ land conservation project proposals including, but not limited to, program requirements and technical assistance with real estate transactions.

~~36-22-14~~ 12-6A-11.

The General Assembly recognizes the critical role nonprofit conservation organizations and organizations that are tax-exempt under Section 501(c)(3) of the federal Internal Revenue Code have in partnering with cities, counties, and the state in accomplishing the land conservation goals as set forth in this chapter. Therefore, the state looks to these organizations to provide program education to the public and private sector; to partner with cities, counties, ~~and the department,~~ the commission, other state departments or agencies, and other state authorities in the identification and development of land conservation project proposals; to promote existing and new partnership enhancement tools; to promote

transferable partnership models, including demonstration projects to assist cities and counties with securing the local funding match; and to take an active role in the permanent protection of conservation lands by holding fee simple title or easements to lands.

~~36-22-15~~ 12-6A-12.

The Georgia Land Conservation Trust Fund established pursuant to Code Section ~~36-22-4~~ 12-6A-4 shall be a successor to the former Georgia Greenspace Trust Fund and, on April 14, 2005, all funds in the Georgia Greenspace Trust Fund shall be transferred into the Georgia Land Conservation Trust Fund."

## PART II

### SECTION 2-1.

Title 12 of the Official Code of Georgia Annotated, relating to conservation and natural resources, is amended by revising Code Section 12-3-403, relating to purpose and nature of the Oconee River Greenway Authority, as follows:

"12-3-403.

The corporate purpose and the general nature of the business of the authority shall be the acquisition or establishment of projects consistent with but not limited to one or more of the goals specified in paragraph ~~(3)~~(5) of Code Section ~~36-22-2~~ 12-6A-2; their maintenance and protection; and their development or restoration. The authority's purpose also shall be to engage in such other activities as it deems appropriate to promote use of any project by means of promoting tourism and educational, entertainment, recreational, athletic, or other events within the state and to promote the use of the educational, historical, cultural, recreational, and natural resources of the state by persons using or visiting any project."

### SECTION 2-2.

Said title is further amended in subsection (a) of Code Section 12-6-5, relating to powers and duties of the State Forestry Commission, by deleting "and" at the end of paragraph (6), replacing the period with "; and" at the end of paragraph (7), and adding a new paragraph to read as follows:

"(8) To engage in land conservation projects as provided by Chapter 6A of this title."

## PART III

### SECTION 3-1.

Article 1 of Chapter 23 of Title 50 of the Official Code of Georgia Annotated, relating to the Georgia Environmental Facilities Authority, is amended in Code Section 50-23-4, relating to definitions, by adding new paragraphs to read as follows:

“(10.1) 'Nongovernmental entity' means a nonprofit organization the primary purposes of which are the permanent protection and conservation of land and natural resources.

(10.2) 'Nonprofit corporation' means any corporation qualified as a not for profit corporation by the Internal Revenue Service under Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code.”

### SECTION 3-2.

Said article is further amended in subsection (b) of Code Section 50-23-5, relating to purpose, powers, and duties of the authority, by adding new paragraphs to read as follows:

“(23.1) To exercise such powers and perform such functions as provided for the authority under Chapter 6A of Title 12, including but not limited to the making of grants and loans as provided therein, for purposes of land conservation projects as defined in said chapter; and to provide advisory, technical, consultative, training, educational, and assistance services and enter into agreements for the same for purposes of such land conservation projects;

(23.2) To incorporate one or more nonprofit corporations as subsidiary corporations of the authority for the purpose of carrying out any of the powers of the authority and to accomplish any of the purposes of the authority including but not limited to accepting donations to be used to advance state-wide energy education and energy efficiency and conservation initiatives. Any subsidiary corporations created pursuant to this power shall be created pursuant to Chapter 3 of Title 14, the 'Georgia Nonprofit Corporation Code,' and the Secretary of State shall be authorized to accept such filings. Upon dissolution of any subsidiary corporation of the authority, any assets shall revert to the authority or to any successor to the authority or, failing such succession, to the State of Georgia. The authority shall not be liable for the debts or obligations or bonds of any subsidiary corporation or for the actions or omissions to act of any subsidiary corporation unless the authority expressly so consents."

### SECTION 3-3.

Said article is further amended by revising subsection (a) of Code Section 50-23-6, relating to grants and loans to local governments and repayment thereof, as follow:

~~"(a) The authority may make grants to governmental entities exercise such powers and perform such functions as provided for in Chapter 22 of Title 36 and as otherwise provided by law Reserved."~~

**SECTION 3-4.**

Said article is further amended by revising Code Section 50-23-20, relating to withholding state funds from local governments failing to collect and remit amounts when due, as follows:

"50-23-20.

(a) In the event of a failure of any local government or nongovernmental entity to collect and remit in full all amounts due to the authority and all amounts due to others, which involve the credit or guarantee of the authority or of the state, on the date such amounts are due under the terms of any bond, revenue bond, note, or other obligation of the local government or nongovernmental entity, it shall be the duty of the authority to notify the director of the Office of Treasury and Fiscal Services who shall withhold all funds of the state and all funds administered by the state, its agencies, boards, and instrumentalities allotted to such local government or nongovernmental entity until such local government or nongovernmental entity has collected and remitted in full all sums due and cured or remedied all defaults on any such bond, revenue bond, note, or other obligation.

(b) Nothing contained in this Code section shall mandate the withholding of funds allocated to a local government or nongovernmental entity which would violate contracts to which the state is a party, the requirements of federal law imposed on the state, or judgments of any court binding the state."

**PART IV****SECTION 4-1.**

All laws and parts of laws in conflict with this Act are repealed.